

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

RONALD HUTCHINS #1067348	§	
v.	§	CIVIL ACTION NO. 6:06cv174
JOHNNY McDANIELS	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Ronald Hutchins, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Hutchins complained of an incident in which he says that the Defendant, Officer McDaniels, conducted an unwarranted strip-search and then made him engage in humiliating activities such as requiring to hop down a line and back while naked. Hutchins also complained that McDaniels retaliated against him by running up to him and threatening him about two weeks after the first incident had occurred.

After review of the pleadings, the Magistrate Judge issued a Report on September 29, 2006, recommending that the lawsuit be dismissed. The Magistrate Judge made clear that McDaniels' actions were improper and reprehensible, but concluded that Hutchins' allegations fell well short of cruel and unusual punishment under the Eighth Amendment. To the extent that Hutchins complained that he suffered mental or emotional distress, the Magistrate Judge stated that he had not shown a qualifying physical injury, as required under 42 U.S.C. §1997e; the Magistrate Judge observed that this statute applies to non-Eighth Amendment claims, including alleged violations of

First or Fourth Amendment rights or of the right to privacy. Finally, the Magistrate Judge determined that Hutchins' claims of threats and retaliation did not rise to the level of constitutional violations under Section 1983. Hutchins filed objections to the Magistrate Judge's Report on October 20, 2006.

The Court has conducted a careful *de novo* review of all of the pleadings in this cause, including the Plaintiff's complaint, the Report of the Magistrate Judge, the Plaintiff's objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED as frivolous with prejudice as to its refiling in federal court, but without prejudice as to any state-law claims which the Plaintiff may raise in the courts of the State of Texas. Finally, it is hereby

ORDERED that any and all motions which may be pending in this cause are hereby DENIED.

So ORDERED and SIGNED this 31st day of October, 2006.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**